

House Bill 343

By: Representatives Gardner of the 57<sup>th</sup>, Tumlin of the 38<sup>th</sup>, Stephenson of the 92<sup>nd</sup>, Teilhet of the 40<sup>th</sup>, McKillip of the 115<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 37 of the Official Code of Georgia Annotated, relating to mental health, so  
2 as to provide a means for a competent adult to control either directly through instructions  
3 written in advance or indirectly through appointing an agent to make mental health care  
4 decisions on behalf of such person according to a written psychiatric advance directive; to  
5 provide a short title; to provide definitions; to provide for standards and limitations with  
6 respect to psychiatric advance directives; to provide for the responsibilities and duties of  
7 physicians and other mental health care providers and agents under psychiatric advance  
8 directives; to provide a statutory psychiatric advance directive form; to provide for  
9 construction of such form; to provide for applicability; to provide for statutory construction  
10 of chapter; to provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by  
14 adding a new chapter to the end of such title to read as follows:

15 "CHAPTER 11

16 37-11-1.

17 This chapter shall be known and may be cited as the 'Psychiatric Advance Directive Act.'

18 37-11-2.

19 As used in this chapter, the term:

20 (1) 'Attending physician' means the physician who has primary responsibility at the time  
21 of reference for the treatment and care of the patient.

22 (2) 'Competent adult' means a person of sound mind who is 18 years of age or older.

1 (3) 'Declarant' means the person executing a psychiatric advance directive pursuant to  
2 this chapter.

3 (4) 'Hospital' means:

4 (A) A facility which has a valid permit or provisional permit issued under Chapter 7  
5 of Title 31 and which is primarily engaged in providing to inpatients, by or under the  
6 supervision of physicians, diagnostic services and therapeutic services for medical  
7 diagnosis, treatment, and care of injured, disabled, or sick persons;

8 (B) A state owned, state operated, or private facility providing services which include,  
9 but are not limited to, inpatient care and the diagnosis, care, and treatment or  
10 habilitation of persons with:

11 (i) Mental or emotional illness;

12 (ii) Developmental disability, as defined in Code Section 37-2-2; or

13 (iii) Addictive disease, as defined in Code Section 37-2-2.

14 Such hospital may also provide or manage state owned or operated programs in the  
15 community;

16 (C) An emergency receiving facility, as defined in Code Section 37-3-1; and

17 (D) An evaluating facility, as defined in Code Section 37-3-1.

18 (5) 'Incapable' means that, in the opinion of the court in a guardianship proceeding or in  
19 the opinions of two physicians or a physician and a psychologist who have personally  
20 examined the patient, a person's ability to receive and evaluate information effectively  
21 or communicate decisions is impaired to such an extent that the person currently lacks the  
22 capacity to make mental health care decisions.

23 (6) 'Mental health care' means any care, treatment, service, or procedure to maintain,  
24 diagnose, treat, or provide for the patient's mental health.

25 (7) 'Mental health care provider' or 'provider' means the attending physician and any  
26 other person administering mental health care to the patient at the time of reference who  
27 is licensed, certified, or otherwise authorized or permitted by law to administer mental  
28 health care in the ordinary course of business or the practice of a profession, including  
29 but not limited to psychologists, clinical social workers, and clinical nurse specialists in  
30 psychiatric/mental health, and any person employed by or acting for any such authorized  
31 person.

32 (8) 'Patient' means the declarant.

33 (9) 'Physician' means a person licensed to practice medicine under Article 2 of Chapter  
34 34 of Title 43.

35 (10) 'Psychiatric advance directive' or 'directive' means an agency governing any type  
36 of mental health care for and on behalf of a patient and refers to the power of attorney or

1 other written instrument defining the agency, or the agency itself, as appropriate to the  
2 context.

3 (11) 'Skilled nursing facility' means a facility which has a valid permit or provisional  
4 permit issued under Chapter 7 of Title 31 and which provides skilled nursing care and  
5 supportive care to patients whose primary need is for availability of skilled nursing care  
6 on an extended basis.

7 37-11-3.

8 (a) A competent adult may execute a psychiatric advance directive of preferences or  
9 instructions regarding his or her mental health care. The directive may include, but is not  
10 limited to, consent to or refusal of specified mental health care.

11 (b) A psychiatric advance directive shall designate a competent adult to act as agent to  
12 make decisions about mental health care for the declarant. An alternative agent may also  
13 be designated to act as agent if the original designee is unable or unwilling to act at any  
14 time. An agent who has accepted the appointment in writing may make decisions about  
15 mental health care on behalf of the declarant only when the declarant is incapable. In  
16 exercising authority under the directive, the agent shall make such decisions consistent with  
17 the instructions and desires of the declarant, as expressed in the directive.

18 (c) A directive shall be effective only if it is signed by the declarant and two competent  
19 adult witnesses. The witnesses shall attest that the declarant is known to them, signed the  
20 directive in their presence, appears to be of sound mind, and is not under duress, fraud, or  
21 undue influence. Persons specified in subsection (e) of Code Section 37-11-4 may not act  
22 as witnesses.

23 (d) A directive shall become effective when it is delivered to the declarant's physician or  
24 other mental health care provider and shall remain in effect unless otherwise specified in  
25 the directive or until revoked by the declarant. The physician or provider shall be  
26 authorized to act in accordance with a directive when the declarant has been found to be  
27 incapable. The physician or provider shall continue to obtain the declarant's informed  
28 consent to all mental health care decisions if the declarant is capable of providing informed  
29 consent or refusal.

30 (e)(1) An agent shall not have authority to make mental health care decisions unless the  
31 declarant is incapable.

32 (2) An agent shall not be, solely as a result of acting in that capacity, personally liable  
33 for the cost of treatment provided to the declarant.

34 (3) Except to the extent that a right is limited by a directive or by any federal law, an  
35 agent shall have the same right as the declarant to receive information regarding the  
36 proposed mental health care and to receive, review, and consent to disclosure of medical

1 records relating to that care. This right of access shall not waive any evidentiary  
2 privilege.

3 (4) An agent shall not be subject to criminal prosecution, civil liability, or professional  
4 disciplinary action for any action taken in good faith pursuant to a psychiatric advance  
5 directive.

6 (f) The authority of a named agent and any alternative agent shall continue in effect so  
7 long as the directive appointing the agent is in effect or until the agent has withdrawn.

8 (g) A person may not be required to execute or to refrain from executing a directive as a  
9 criterion for insurance, as a condition for receiving mental or physical health care services,  
10 or as a condition of discharge from a hospital or skilled nursing facility.

11 37-11-4.

12 (a) Upon being presented with a psychiatric advance directive, a physician shall make the  
13 directive a part of the declarant's medical record. When acting under authority of a  
14 directive, a physician or other provider shall comply with it to the fullest extent possible,  
15 consistent with reasonable medical practice, the availability of treatments requested, and  
16 applicable law. If the physician or other provider is unwilling at any time to comply with  
17 the directive, the physician or provider shall promptly notify the declarant and the agent  
18 and document the notification in the declarant's medical record.

19 (b) A physician or provider may subject a declarant to intrusive treatment in a manner  
20 contrary to the declarant's wishes, as expressed in a psychiatric advance directive, if:

21 (1) The declarant has been committed to the custody of a local mental health authority;  
22 or

23 (2) The declarant presents a substantial risk of imminent harm to himself or herself or  
24 to others.

25 (c) A directive shall not limit any authority to take a person into custody or admit or retain  
26 a person in the custody of a local mental health authority pursuant to Article 3 of Chapter  
27 11 of Title 37 or any other applicable law.

28 (d) A directive may be revoked in whole or in part by the declarant at any time so long as  
29 the declarant is not incapable. Such revocation shall be effective when the declarant  
30 communicates the revocation to the attending physician or other provider. The attending  
31 physician or other provider shall note the revocation as part of the declarant's medical  
32 record.

33 (e) None of the following persons may serve as an agent or as witnesses to the signing of  
34 a directive:

35 (1) The declarant's attending physician or mental health care provider or an employee  
36 of that physician or provider;

(2) An employee of the Department of Human Resources or of a local mental health authority or any organization that contracts with a local mental health authority; provided, however, that this shall not apply to family members, friends, or other associates of the declarant if the declarant so wishes.

(f) An agent may withdraw by giving written notice to the declarant. If a declarant is incapable, the agent may withdraw by giving written notice to the attending physician or provider. The attending physician shall note the withdrawal as part of the declarant's medical record.

37-11-5.

(a) The statutory psychiatric advance directive form contained in this subsection may be used to grant an agent powers with respect to the declarant's own mental health care; but the statutory psychiatric advance directive form is not intended to be exclusive or to cover delegation of a parent's power to control the mental health care of a minor child, and no provision of this chapter shall be construed to bar use by the declarant of any other or different form of directive or power of attorney for mental health care that complies with the provisions of this chapter. If a different form of psychiatric advance directive is used, it may contain any or all of the provisions set forth or referred to in the following form. When a directive in substantially the following form is used, and notice substantially similar to that contained in the form below has been provided to the patient, it shall have the same meaning and effect as prescribed in this chapter. Substantially similar forms may include forms from other states. The statutory psychiatric advance directive may be included in or combined with any other form of advance directive governing property or other matters, and no provision of this chapter shall be construed to bar use by the declarant of a durable power of attorney for health care form pursuant to Chapter 36 of Title 31, either solely or in addition to the form contained in this subsection.

#### **Psychiatric Advance Directive**

*Name:* \_\_\_\_\_

*Date:* \_\_\_\_\_

#### **Mental Health Care Agent:**

*Name:* \_\_\_\_\_

*Address:* \_\_\_\_\_

\_\_\_\_\_

*Day Phone Number:* \_\_\_\_\_

1 *Night Phone:* \_\_\_\_\_

2 STATEMENT OF INTENT

3 I, (*your name*) \_\_\_\_\_, being of sound mind,  
4 willfully and voluntarily execute this psychiatric advance directive to assure that, during  
5 periods of incapacity resulting from psychiatric illness, my choices regarding my mental  
6 health care will be carried out despite my inability to make informed decisions on my own  
7 behalf. In the event that a decision maker is appointed by a court to make mental health care  
8 decisions for me, I intend this document to take precedence over all other means of  
9 ascertaining my intent while competent.

10 By this document, I intend to create a psychiatric advance directive as authorized by state  
11 law, the U.S. Constitution and the federal Patient Self-Determination Act of 1990 (P.L.  
12 101-508) to indicate my wishes regarding mental health treatment. I understand that this  
13 directive will become operative upon my incapacity to make my own mental health decisions  
14 and shall continue in operation only during that incapacity.

15 I intend that this document should be honored whether or not my agent dies or withdraws or  
16 if I have no agent appointed at the time of the execution of this document.

17 Incomplete sections in this psychiatric advance directive (i.e., not completed certain sections)  
18 should not affect its validity in any way. I intend that all completed sections be followed.

19 If any part of this psychiatric advance directive is invalid or ineffective under relevant law,  
20 this fact should not affect the validity or effectiveness of the other parts. It is my intention  
21 that each part of this psychiatric advance directive stand alone. If some parts of this  
22 document are invalid or ineffective, I desire that all other parts be followed.

23 I intend this psychiatric advance directive to take precedence over any and all living will  
24 documents and/or durable power of attorney for health care documents and/or other advance  
25 directives I have previously executed, to the extent that they are inconsistent with this  
26 document.

1 Name: \_\_\_\_\_

2 **Instructions Included in My Psychiatric Advance Directive**

3 *Put your initials in the space next to each section you have completed.*

4 \_\_\_\_\_ Designation of my mental health care agent.

5 \_\_\_\_\_ Designation of alternate mental health care agent.

6 \_\_\_\_\_ Authority granted to my mental health care agent.

7 \_\_\_\_\_ When spouse is mental health care agent.

8 \_\_\_\_\_ Symptoms.

9 \_\_\_\_\_ When my plan is no longer needed.

10 \_\_\_\_\_ Clinicians.

11 \_\_\_\_\_ Medications.

12 \_\_\_\_\_ Hospitalization is not my first choice.

13 \_\_\_\_\_ Treatment facilities.

14 \_\_\_\_\_ Acceptable interventions.

15 \_\_\_\_\_ Preferred interventions.

16 \_\_\_\_\_ Help from others.

17 \_\_\_\_\_ Signature page.

18 \_\_\_\_\_ Record of psychiatric advance directive.

19 **APPOINTMENT OF AGENT FOR MENTAL HEALTH CARE**

20 *If you do not wish to appoint an agent, do not complete the sections below.*

21 *Make sure you give your agent a copy of all sections of this document.*

22 **Statement of Intent to Appoint an Agent:**

23 I, (*your name*) \_\_\_\_\_, being of sound mind, authorize  
24 a mental health care agent to make certain decisions on my behalf regarding my mental  
25 health treatment when I do not have the capacity to do so. I intend that those decisions should  
26 be made in accordance with my expressed wishes as set forth in this document. If I have not  
27 expressed a choice in this document, I authorize my agent to make the decisions that my  
28 agent determines are the decisions I would make if I had the capacity to do so.

1 **Designation of Mental Health Care Agent**

2 A. I hereby designate and appoint the following person as my agent to make mental health  
3 care decisions for me as authorized in this document. In the event that admission for  
4 psychiatric treatment is being considered, my agent must be notified/consulted before any  
5 decision is finalized.

6 Name: \_\_\_\_\_

7 Address: \_\_\_\_\_

8 \_\_\_\_\_

9 Day Phone Number \_\_\_\_\_ Night Phone \_\_\_\_\_

10 B. Agent's Acceptance: I hereby accept the designation as agent for

11 (*Your name*) \_\_\_\_\_

12 (*Your agent's signature*) \_\_\_\_\_

13 I certify that I do not, have not, and will not provide care and treatment for this person.

14 **Designation of Alternate Mental Health Care Agent**

15 If the person named above is unavailable or unable to serve as my agent, I hereby appoint  
16 and desire immediate notification of my alternate agent as follows:

17 Name: \_\_\_\_\_

18 Address: \_\_\_\_\_

19 \_\_\_\_\_

20 Day Phone Number \_\_\_\_\_ Night Phone \_\_\_\_\_

21 Alternate Agent's Acceptance: I hereby accept the designation as alternate agent for

22 (*Your name*) \_\_\_\_\_

23 (*Your agent's signature*) \_\_\_\_\_

24 I certify that I do not, have not, and will not provide care and treatment for this person.



1 **Authority Granted to My Mental Health Care Agent**

2 *Initial if you agree with a statement; leave blank if you do not.*

3 A. \_\_\_\_\_ If I become incapable of giving consent to mental health care treatment, I  
4 hereby grant to my agent full power and authority to make mental health care decisions for  
5 me, including the right to consent, refuse consent, or withdraw consent to any mental health  
6 care, mental health care treatment, mental health care provider, or mental health care service  
7 or procedure, consistent with any instructions and/or limitations I have set forth in this  
8 psychiatric advance directive. If I have not expressed a choice in this advance directive, I  
9 authorize my agent to make decisions that my agent determines are the decisions I would  
10 make if I had the capacity to do so.

11 B. \_\_\_\_\_ If I am incapable of authorizing the release of my medical records, I hereby  
12 grant to my agent full power and authority to request these records on my behalf.

13 C. \_\_\_\_\_ If I choose to discharge or replace my agent, all other provisions of this  
14 psychiatric advance directive shall remain in effect and shall only be revocable or changeable  
15 by me.

16 **When Spouse Is Mental Health Care Agent and If There Has Been a Legal Separation,**  
17 **Annulment, or Dissolution of the Marriage**

18 *Initial if you agree with this statement; leave blank if you do not.*

19 \_\_\_\_\_ I desire the person I have named as my agent, who is now my spouse, to remain  
20 as my agent even if we become legally separated or our marriage is dissolved.

21 **The following sections outline when my psychiatric advance directive should be**  
22 **activated, when it no longer needs to be used, and details regarding my care, treatment,**  
23 **and preferred interventions.**

24 **Symptoms**

25 When I exhibit the following symptoms or behaviors, this would indicate that my psychiatric  
26 advance directive needs to be enacted:

27 \_\_\_\_\_  
28 \_\_\_\_\_  
29 \_\_\_\_\_  
30 \_\_\_\_\_

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8 **When My Plan Is No Longer Needed**

9 When I exhibit the following behaviors, my plan no longer needs to be utilized:

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23 **Clinicians**

24 The names of my doctors, therapists, pharmacists, and service providers and their telephone  
25 numbers are:

26	<u>Name</u>	<u>Phone #</u>
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3 I prefer treatment from the following clinicians:

4 Name

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11 I prefer not to be treated by the following clinicians:

12 Name

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19 **Medications**

20 (include all medications, whether for mental health care treatment or general health care  
21 treatment)

22 I am currently using the following medications for:

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If additional medications become necessary, I prefer to take the following medications:

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I cannot tolerate the following medications because:

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I am allergic to the following medications:

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**Hospitalization is not my first choice**

It is my intention, if possible, to stay at home or in the community with the following supports:

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**Treatment Facilities**

If it becomes necessary for me to be hospitalized, I would prefer to be treated at the following facilities:

I do not wish to be treated at the following facilities:

**Acceptable Interventions:** *(Please place your initials in the blanks)*

Medication in pill form	Yes	_____	No	_____
Liquid medication	Yes	_____	No	_____
Medication by injection	Yes	_____	No	_____
Seclusion	Yes	_____	No	_____
Physical restraints	Yes	_____	No	_____
Seclusion and physical restraints	Yes	_____	No	_____
Experimental treatment	Yes	_____	No	_____
Electroconvulsive therapy (ECT)	Yes	_____	No	_____

\_\_\_\_\_ I consent to the administration of electroconvulsive therapy with the following conditions:

**Preferred Interventions:**

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11 **Help from Others**

12 List your supporters and the ways they can help you. Be sure to write their names, phone  
13 numbers, and responsibilities (mail, bills, pet, child care, etc.).

14	<u>Name</u>	<u>Phone Number</u>	<u>Responsibility</u>
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33 I signed this psychiatric advance directive on (date) \_\_\_\_\_.

34 Any plan with a more recent date supersedes this one.

Signed \_\_\_\_\_ Date \_\_\_\_\_  
Witness \_\_\_\_\_ Date \_\_\_\_\_  
Witness \_\_\_\_\_ Date \_\_\_\_\_  
*(for use by the notary)*  
STATE OF \_\_\_\_\_, County of \_\_\_\_\_  
Subscribed and sworn to or affirmed before me by the Principal,  
\_\_\_\_\_,  
and (names of witnesses)  
\_\_\_\_\_ and  
\_\_\_\_\_,  
witnesses, as the voluntary act and deed of the Principal, this \_\_\_\_\_ day of \_\_\_\_\_.  
\_\_\_\_\_.  
My commission expires:  
\_\_\_\_\_  
\_\_\_\_\_  
Notary Public

**Record of Psychiatric Advance Directive**

**I have given copies of my psychiatric advance directive to:**

**Name/Location:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone Numbers:** \_\_\_\_\_  
  
**Name/Location:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone Numbers:** \_\_\_\_\_  
  
**Name/Location:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone Numbers:** \_\_\_\_\_  
  
**Name/Location:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone Numbers:** \_\_\_\_\_

1 **Name/Location:** \_\_\_\_\_

2 **Address:** \_\_\_\_\_

3 **Phone Numbers:** \_\_\_\_\_

4 **Name/Location:** \_\_\_\_\_

5 **Address:** \_\_\_\_\_

6 **Phone Numbers:** \_\_\_\_\_

7 **Name/Location:** \_\_\_\_\_

8 **Address:** \_\_\_\_\_

9 **Phone Numbers:** \_\_\_\_\_

10 **Name/Location:** \_\_\_\_\_

11 **Address:** \_\_\_\_\_

12 **Phone Numbers:** \_\_\_\_\_

(b) The statutory psychiatric advance directive form provided in subsection (a) of this Code section authorizes, and any different form of mental health care agency may authorize, the agent to make any and all mental health care decisions on behalf of the declarant which the declarant could make if present and under no disability, incapacity, or incompetency, subject to any limitations on the granted powers that appear on the face of the form, to be exercised in such manner as the agent deems consistent with the intent and desires of the declarant. The agent shall be under no duty to exercise granted powers or to assume control of or responsibility for the declarant's mental health care; but, when granted powers are exercised, the agent shall be required to use due care to act for the benefit of the declarant in accordance with the terms of the psychiatric advance directive. The agent may not delegate authority to make mental health care decisions. The agent may sign and deliver all instruments, negotiate and enter into all agreements, and do all other acts reasonably necessary to implement the exercise of the powers granted to the agent. Without limiting the generality of the foregoing, the statutory psychiatric advance directive form shall, and any different form of mental health care agency may, include the following powers, subject to any limitations appearing on the face of the form:

(1) The agent is authorized to consent to and authorize or refuse, or to withhold or withdraw consent to, any and all types of medical care, treatment, or procedures relating to the mental health of the declarant, including any medication program;

(2) The agent is authorized to admit the declarant to or discharge the declarant from any and all types of hospitals, institutions, homes, residential or nursing facilities, treatment



1 centers, and other health care institutions providing mental health care or treatment for  
2 any type of mental condition;

3 (3) The agent is authorized to contract for any and all types of mental health care  
4 services and facilities in the name of and on behalf of the declarant, and the agent shall  
5 not be personally liable for any services or care contracted for on behalf of the declarant;  
6 and

7 (4) At the declarant's expense and subject to reasonable rules of the mental health care  
8 provider to prevent disruption of the declarant's mental health care, the agent shall have  
9 the same right the declarant has to examine and copy and consent to disclosure of all the  
10 declarant's medical records that the agent deems relevant to the exercise of the agent's  
11 powers, whether the records relate to mental health or any other medical condition and  
12 whether they are in the possession of or maintained by any physician, psychiatrist,  
13 psychologist, therapist, hospital, skilled nursing facility, or other health care provider,  
14 notwithstanding the provisions of any statute or other rule of law to the contrary. This  
15 authority shall include all rights that the declarant has under the federal Health Insurance  
16 Portability and Accountability Act of 1996 ('HIPAA'), P.L. 104-191, and its  
17 implementing regulations regarding the use and disclosure of individually identifiable  
18 health information and other medical records.

19 37-11-6.

20 (a) This chapter applies to all mental health care providers and other persons in relation  
21 to all mental health care agencies or directives executed on and after July 1, 2007. This  
22 chapter supersedes all other provisions of law or parts thereof existing on July 1, 2007, to  
23 the extent such other provisions are inconsistent with the terms and operation of this  
24 chapter, provided that this chapter does not affect the provisions of law governing  
25 emergency health care. If the declarant has executed a durable power of attorney for health  
26 care pursuant to Chapter 36 of Title 31, as now or hereafter amended, the declarant shall  
27 indicate within either document which is to take precedence with regard to mental health  
28 care decisions. Furthermore, unless the psychiatric advance directive provides otherwise,  
29 the agent who is known to the mental health care provider to be available and willing to  
30 make mental health care decisions for the patient has priority over any other person,  
31 including any guardian of the person, to act for the patient in all matters covered by the  
32 directive.

33 (b) This chapter does not in any way affect or invalidate any directive executed or any act  
34 of an agent prior to July 1, 2007, or affect any claim, right, or remedy that accrued prior to  
35 July 1, 2007.

1 (c) This chapter is wholly independent of the provisions of Title 53, relating to wills,  
2 trusts, and the administration of estates, and nothing in this chapter shall be construed to  
3 affect in any way the provisions of said Title 53."

4 **SECTION 2.**

5 All laws and parts of laws in conflict with this Act are repealed.